



U.S. Department of Justice

Carmen M. Ortiz
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

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July 10, 2015

By Regular and Electronic Mail

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Martin G. Weinberg
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Re: United States v. Timothy R. Flaherty
Criminal No. 15-10127-MLW

Dear Counsel:

The government hereby responds to your June 26, 2015, letter requesting additional discovery pursuant to Local Rule 116.3(A). The government has reviewed your request and is of the opinion that your request is motivated by a misreading of Fowler v. United States, 131 S. Ct. 2045, (2011). It is the government's position that Fowler does not apply to the present case because there was an investigation commenced by federal authorities on December 23, 2014. Relevant communications had already reached federal authorities and, therefore, the Fowler "reasonable likelihood" standard established to address hypotheticals and unknowns is not applicable. Furthermore, the government understands its continuing obligation to produce Brady material and will do so should such material exist.

The following is the government's response to each individual discovery request:

Request #1: All discoverable material has been produced and any additional material is not discoverable pursuant to Rule 16(a)(2).

Request #2: All discoverable material has already been produced and any additional

material is not discoverable pursuant to Rule 16(a)(2).

Request #3: All discoverable material has already been produced and any additional material is not discoverable pursuant to Rule 16(a)(2).

Request #4: All discoverable material has already been produced and any additional material is not discoverable pursuant to Rule 16(a)(2).

Request #5: All discoverable material has already been produced and any additional material is not discoverable pursuant to Rule 16(a)(2).

Request #6: All discoverable material has already been produced and any additional material is not discoverable pursuant to Rule 16(a)(2).

Request #7: (a) This information has been produced; (b) the government declines to produce this information and notes that it is information not subject to disclosure pursuant to Rule 16(a)(2); (c) the government declines to produce this information and notes that it is information not subject to disclosure pursuant to Rule 16(a)(2).

Request #8: This requested information is not relevant to this case and the government declines to produce it.

Request #9: The government is not aware of any warrant being obtained pursuant to Commonwealth v. Blood, 507 N.E.2d 1029 (Mass. 1987).

Request #10: This information or material is not subject to disclosure pursuant to Rule 16(a)(2).

Request #11: There is no recording of this voicemail.

Request #12: There is no recording of this telephone call.

Request #13: This recording exists and will be provided within one week.

Request #14: This information will be obtained by the government and will be produced as soon as possible.

Request #15: The requested information is not relevant or material and the government declines to produce it.

Request #16: The government does not possess any information relative to this request and the material is not subject to disclosure pursuant to Rule 16(a)(2).

Request #17: This information or material is not subject to disclosure pursuant to Rule 16(a)(2).

Request #18: This information or material is not subject to disclosure pursuant to Rule 16(a)(2).

Request #19: The government will request a copy of this Letterhead Memorandum and produce it if it is discoverable.

Request #20: The information possessed by the government regarding the state court prosecutions was obtained from Ralph Feinberg's 2009 Presentence Investigation Report (PSR) prepared by the United States Probation Office for the District of Arizona.

Request #20(a): The government was aware of Ralph Feinberg's prior criminal history as early as December 23, 2014.

Request #21: All discoverable material has already been produced and any additional material is not discoverable pursuant to Rule 16(a)(2).

Request #22 through #29: This information is not relevant or material and the government declines to produce it.

Request #30: All discoverable material has already been produced and any additional material is not discoverable pursuant to Rule 16(a)(2).

Request #31: All discoverable material has already been produced and any additional material is not discoverable pursuant to Rule 16(a)(2).

Request #32: The government declines to produce this information at this time pursuant to 18 U.S.C. §3500.

Request #33: This information does not exist.

Request #34: To the extent that this information exists, it has been produced.

Request #35: This information or material is not subject to disclosure pursuant to Rule 16(a)(2).

Request #36: This information or material is not subject to disclosure pursuant to Rule 16(a)(2).

Request #37: No material exists.

Request #38: No material exists.

Request #39: The government is not aware of any information applicable to this request.

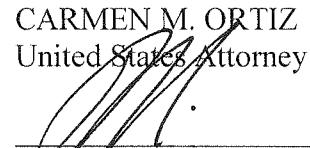
Request #40: The government is not currently in possession of evidence gathered by the Bar Counsel or Board of Bar Overseers.

Please call the undersigned Assistant U.S. Attorneys at 617-748-3612 if you have any questions.

Very truly yours,

CARMEN M. ORTIZ
United States Attorney

By:



Robert A. Fisher
S. Theodore Merritt
Assistant U.S. Attorneys

cc: Clerk's Office (via ECF)